

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STACY ANN POTTER GIBBONS,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. 1:21-cv-00741-EPG

FINAL JUDGMENT AND ORDER
REGARDING PLAINTIFF'S SOCIAL
SECURITY COMPLAINT

(ECF Nos. 1, 15).

This matter is before the Court on Plaintiff's complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration regarding her application for disability insurance benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit. (ECF No. 10).

Plaintiff argues that (1) the ALJ improperly rejected her testimony and (2) that the ALJ's step-four finding is not supported by substantial evidence. (ECF No. 15, pp. 3-4). Having reviewed the record, administrative transcript, the briefs of the parties, and the applicable law, the Court finds as follows:

1 **I. ANALYSIS**

2 Plaintiff first argues that the ALJ failed to provide specific, clear and convincing reasons
3 for discounting her testimony about her symptoms. (*Id.* at 7). The Ninth Circuit has provided the
4 following guidance regarding a plaintiff's subjective complaints:

5 Once the claimant produces medical evidence of an underlying impairment, the
6 Commissioner may not discredit the claimant's testimony as to subjective
7 symptoms merely because they are unsupported by objective evidence. *Bunnell v.*
8 *Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *see also Cotton v.*
9 *Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986) ("it is improper as a matter of law to
10 discredit excess pain testimony solely on the ground that it is not fully
11 corroborated by objective medical findings"). Unless there is affirmative evidence
12 showing that the claimant is malingering, the Commissioner's reasons for rejecting
13 the claimant's testimony must be "clear and convincing." *Swenson v. Sullivan*, 876
14 F.2d 683, 687 (9th Cir. 1989). General findings are insufficient; rather, the ALJ
15 must identify what testimony is not credible and what evidence undermines the
16 claimant's complaints.

17 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), *as amended* (Apr. 9, 1996). Additionally, an
18 ALJ's reasoning "must be supported by substantial evidence in the record as a whole." *Johnson v.*
19 *Shalala*, 60 F.3d 1428, 1433 (9th Cir. 1995). "Substantial evidence means such relevant evidence
20 as a reasonable mind might accept as adequate to support a conclusion" and "[w]here the
21 evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that
22 must be upheld." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999)
23 (citations omitted).

24 Here, the ALJ concluded that Plaintiff's "medically determinable impairments could
25 reasonably be expected to cause the alleged symptoms." (A.R. 19). Accordingly, because there is
26 no affirmative evidence showing that Plaintiff was malingering, the Court looks to the ALJ's
27 decision for clear and convincing reasons, supported by substantial evidence, for not giving full
28 weight to Plaintiff's symptom testimony. Here, the ALJ summarized the Plaintiff's subjective
complaints and the reasons for discounting them as follows:

The claimant complains of back pain, left knee pain, and hip pain. Her back pain
radiates to the right lower extremity, causing pain, numbness, and weakness. She
allegedly has difficulties with physical exertion, postural activities, and sleep. She
allegedly needs to rest, take breaks, nap, change positions, and lie down often
throughout the day. She allegedly has a tendency to fall. Her medications cause

1 sleepiness, drowsiness, fatigue, nausea, vomiting, constipation, lightheadedness,
2 dizziness, mood changes, slow reactions, forgetfulness, and concentration
problems (Exhibits 2E, 4E, 8E, 11E, and hearing testimony).

3 Diagnostic images of the claimant's lumbar spine taken in 2018 showed moderate
4 to severe degenerative changes with moderate to severe foraminal stenosis at
multiple levels (Exhibits 2F/7 and 4F/50). She underwent left total knee
5 replacement for advanced degenerative joint disease in March 2019 (Exhibits 4F
and 5F). X-rays of her right pelvis taken in October 2018 revealed degenerative
6 changes in the hip (Exhibit 1F/15). She has also been diagnosed with right
piriformis syndrome (e.g. Exhibit 19F). In addition, during the adjudicative period,
7 she often had diminished ranges of motion in the lumbar spine and left knee,
tenderness in the right piriformis, and abnormal gait (e.g. Exhibits 2F, 4F, 11F,
8 13F, 16F, 18F, and 19F).

9 After careful consideration of the evidence, I find that the claimant's medically
10 determinable impairments could reasonably be expected to cause the alleged
symptoms; however, the claimant's statements concerning the intensity,
11 persistence and limiting effects of these symptoms are not entirely consistent with
the medical evidence and other evidence in the record for the reasons explained
12 below.

13 The evidence of record reflects that medications and heat help relieve her pain
(Exhibits 4E, 2F, and 19F). With respect to her radicular symptoms, the record
14 contains no relevant electrodiagnostic findings and she generally exhibited normal
motor and sensory function (e.g. Exhibits 1F, 2F, and 19F). She allegedly has used
15 a cane since 2018 and a walker since January 2020, but the treatment notes did not
document a prescription for or regular usage of any assistive device. In fact, her
16 own physician generally noted that she did not use any assistive device (e.g.
Exhibits 2F and 19F). In addition, she is largely independent in personal care and
17 is able to perform light cleaning (hearing testimony). Although she alleges various
side effects from the use of medications, the evidence of record documents no
18 significant, ongoing concerns from any medical source, which suggests that these
side effects are generally mild. Side effects, such as sleepiness, drowsiness,
19 fatigue, lightheadedness, and dizziness are also accommodated by the
20 environmental limitations assessed herein.

21
22 Given the claimant's allegations of totally disabling symptoms, one might expect
to see some indication in the treatment records of restrictions placed on the
23 claimant by the claimant's own medical sources. Yet a review of the record in this
case reveals no restrictions recommended by the claimant's own medical sources.
24 It is also emphasized that all of the medical opinions in the record . . . generally
25 agreed the claimant could perform some work, despite her limitations.

26 (A.R. 19-20).

27 The first reason relied on by the ALJ to discount Plaintiff's testimony is that medical
28 evidence showed that Plaintiff's medications and heat helped to relieve her pain. Conflicts

1 between a plaintiff's pain testimony and the medical record is a clear and convincing basis to
2 discount her testimony. *See Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007) (noting that
3 inconsistencies between claimant's testimony and medical evidence was a proper ground to
4 discredit testimony). And here, review of the record supports the ALJ's assessment.

5 As the ALJ noted, Exhibit 4E, a February 25, 2019 pain questionnaire filled out by
6 Plaintiff, shows that some of her pain medication lowered her pain from a level 10 to a level 5-7
7 for a period of 4 to 6 hours, and she was able to take this medication as needed for the pain. (A.R.
8 210). Additionally, Exhibit 2F contains a January 30, 2019 medical record from Dr. Kyle Heron,
9 noting that "[r]est, heat and medications help [relieve] [Plaintiff's] pain" and that Plaintiff "has
10 had prior Triple blocks with >90% pain relief." (A.R. 303). Likewise, Exhibit 19F contains
11 various medical records noting that Plaintiff obtained pain relief from treatment. (*See, e.g.*, A.R.
12 931 (noting that heat and medications help to relieve Plaintiff's pain), A.R. 934 (noting that
13 medial branch blocks relieved 85% of pain for two days thus far)). While the medical records
14 reflect that Plaintiff's pain relief was temporary, *e.g.*, from a number of hours to days at a time,
15 even temporary pain relief from a number of treatments is a valid basis to discount Plaintiff's
16 testimony concerning the degree of pain she experienced.

17
18 The next reason relied on by the ALJ is that Plaintiff's radicular symptoms were
19 unsupported by electrodiagnostic findings and that the medical records revealed generally normal
20 motor and sensory function. As to the lack of supporting electrodiagnostic findings, the ALJ was
21 correct to cite this as one factor, among others, to discount Plaintiff's pain testimony. *See Burch*
22 *v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical evidence cannot form
23 the sole basis for discounting pain testimony, it is a factor that the ALJ can consider in his
24 credibility analysis."). Moreover, the ALJ correctly pointed out that medical records indicated
25 that Plaintiff had normal motor and sensory function, which could be reasonably be construed as
26 inconsistent with her debilitating claims of pain in her back, knee, and hip. (A.R. 261 (noting that
27 Plaintiff had normal range of motion in her right ankle, knee, and hip with some pain); 315
28

1 (noting “[m]otor is intact”); 988 (noting “[s]ensation intact”)).

2 The next reason relied on by the ALJ is that, although Plaintiff allegedly used a cane and
3 walker, treatment notes did not document a prescription for an assistive device or that Plaintiff
4 regularly relied on one. As for the lack of a prescription, Defendant concedes that the ALJ was
5 wrong to say there was none, as the record reflects that Plaintiff did have a prescription for a
6 walker with a seat as of February 12, 2019. (A.R. 28); (ECF No. 17, p. 8). Even so, this
7 prescription for an assistive device was to help Plaintiff recover from her knee surgery and there
8 is nothing to indicate that it was prescribed for a permanent impairment. (A.R. 38-39). In fact, as
9 the ALJ correctly observed, at other times in the relevant period, that medical records often
10 indicated that Plaintiff did not use an assistive device. (A.R. 304, 931, 950, 954, 968 (noting that
11 Plaintiff “does not use a device”)).

12 The next reason relied on by the ALJ is that Plaintiff was largely independent in personal
13 care and could perform light cleaning. The Court rejects this rationale as Plaintiff’s modest ability
14 to perform personal care, such as shower, and to clean, such as dusting mirrors, is not inconsistent
15 with Plaintiff’s testimony about the pain she experienced nor her need to take breaks after
16 physical exertion. (A.R. 36 (testifying that while she could clean countertops, she could not
17 vacuum, mop, or clean toilets, nor could she perform tasks that required her to bend over); 40
18 (testifying that she could walk for about half a block before needing to stop and rest)); *see Fair v.*
19 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (concluding that “many home activities are not easily
20 transferable to what may be the more grueling environment of the workplace, where it might be
21 impossible to periodically rest or take medication”).

22 The next reason relied on by the ALJ is that Plaintiff’s side effects from the medication
23 were not documented as presenting serious ongoing concerns in the record, suggesting that the
24 side effects were generally mild, and those side effects were accommodated for in the limitations
25 that the ALJ assessed. While Plaintiff counters that a medical record from PA-C Bravate
26 documented Plaintiff as having “malaise/fatigue, nausea, dizziness, weakness, depression, and
27
28

1 insomnia,” the cited record simply lists these as symptoms, and does not link them to side effects
2 that Plaintiff experienced from her medications. (ECF No. 15, p. 10 (citing A.R. 646)). Nor does
3 this record opine on the severity or duration of these symptoms. The ALJ properly considered the
4 lack of such evidence as one factor in discounting Plaintiff’s testimony. *See Orteza v. Shalala*, 50
5 F.3d 748, 750 (9th Cir. 1995) (“An ALJ is clearly allowed to consider . . . the lack of side effects
6 from prescribed medications” in discrediting subjective complaints.).

7 The last reason relied on by the ALJ is that Plaintiff’s own medical sources failed to place
8 restrictions on her and that state agency medical consultants uniformly concluded that Plaintiff
9 could perform some work. It was reasonable for the ALJ to question the lack of limitations in the
10 record placed on Plaintiff by her own medical sources in light of Plaintiff’s claims of disabling
11 symptoms, as such sources would have more opportunities than other medical sources to observe
12 and opine on Plaintiff’s limitations. Moreover, as elsewhere noted in the ALJ’s opinion, state
13 agency consultants—Dr. Nasrabadi and Dr. Bugg—both opined, based on record evidence, that
14 Plaintiff had the ability to work. (A.R. 20, 56, 71). The ALJ was correct to conclude that the only
15 opinions of record thus contradicted Plaintiff’s testimony.
16

17 After considering the reasons given and the record as a whole, the Court finds that the
18 ALJ provided specific, clear and convincing reasons supported by substantial evidence to
19 discount Plaintiff’s subjective symptom testimony.

20 Building off her previous argument, Plaintiff next argues that the step four finding—in
21 which the ALJ concluded that Plaintiff could perform past relevant work as an account advisor
22 based on her assessed limitations—was not supported by substantial evidence because the ALJ
23 omitted Plaintiff’s credible allegations, such as her side effects from medications, in posing
24 hypothetical questions to the vocational expert. (ECF No. 15, p. 11); (*see* A.R. 21). However, as
25 noted above, the Court has determined that the ALJ did not err in discrediting Plaintiff’s
26 subjective testimony and thus concludes that the ALJ set out the proper limitations for the
27 vocational expert in determining whether Plaintiff could perform past relevant work.
28

1 **II. CONCLUSION AND ORDER**

2 Thus, the decision of the Commissioner of Social Security is hereby affirmed. And the
3 Clerk of the Court is directed to close this case.

4
5 IT IS SO ORDERED.

6 Dated: March 31, 2022

7 /s/ Eric P. Grogan
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28